

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *

Plaintiff, *

-v- 15-CR-333 *

SHANE ROBERT SMITH, *

Defendant. *

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MAE A. D'AGOSTINO
April 15, 2016
445 Broadway, Albany, New York

FOR THE GOVERNMENT:

OFFICE OF THE UNITED STATES ATTORNEY
445 Broadway
Albany, New York 12207
By: Sean K. O'Dowd, AUSA

FOR THE DEFENDANT:

WILLIAM E. MONTGOMERY, III, ESQ.
130 Maple Street
Glens Falls, New York 12081

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1 COURT CLERK: Today is Friday, April 15th,
2 2016, the time is 10 A.M., the case is United States of
3 America versus Shane Robert Smith, a/k/a Robert Smith,
4 case number 15-CR-333. We are here today for a change of
5 plea hearing.

6 May we have appearances for the record, please.

7 MR. O'DOWD: Good morning, your Honor. Sean
8 O'Dowd on behalf of the United States, and I'm joined
9 today at counsel table with my colleague AUSA Solomon
10 Shinerock.

11 THE COURT: Good morning to both of you.

12 MR. MONTGOMERY: Good morning, Judge. Bill
13 Montgomery on behalf of Shane Smith.

14 THE COURT: Good morning to both of you. I
15 understand we're here today because the defendant wants
16 to enter a plea of guilty; is that correct?

17 MR. MONTGOMERY: It is, your Honor.

18 THE COURT: All right. Mr. Smith, before I
19 accept your plea, I will explain to you the rights that
20 you give up by pleading guilty and the consequences of
21 pleading guilty and I'll ask you some questions, and if
22 I'm satisfied that your plea is knowing and intentional,
23 I will accept it.

24 Let me ask you, sir, have you received and read
25 a copy of the indictment?

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1 MR. MONTGOMERY: Would you like him to stand,
2 your Honor?

3 THE COURT: No, he doesn't have to stand but
4 you can do me a favor by moving that microphone really
5 close.

6 THE DEFENDANT: Yes, I think so.

7 THE COURT: Well, when you say you think so, I
8 need to know. Has your attorney given you a copy of the
9 indictment which has the charge in it against you and
10 have you read it?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. Have you had adequate time
13 and opportunity to discuss the indictment and all aspects
14 of your case with your attorney Mr. Montgomery?

15 THE DEFENDANT: Yes.

16 THE COURT: Since you're pleading guilty,
17 you're giving up your right to a trial and I will now
18 discuss with you some of those rights.

19 You have the right to continue to plead not
20 guilty. You have the right to be represented by an
21 attorney at trial and at every other stage of the
22 proceedings, and if you could not afford an attorney, one
23 will be appointed for you by the Court. You have the
24 right to a speedy and public trial by an impartial jury
25 or to a trial by the Court without a jury if you

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1 consented, the government consented and the Court
2 approved.

3 At the trial, you would be presumed innocent
4 under the law and the burden would be upon the government
5 to establish your guilt beyond a reasonable doubt to the
6 satisfaction of the jury or to the satisfaction of the
7 Court if you waived a jury, the government consented and
8 the Court approved.

9 At the trial you would have the right to
10 confront any witnesses against you, the right to see and
11 hear those witnesses and to cross-examine them.

12 You would have the right to remain silent or to
13 testify on your own behalf but you could not be compelled
14 to incriminate yourself or to testify at all and your
15 silence could not be held against you in any way and no
16 inference of guilt could be drawn against you from your
17 failure to testify.

18 You would have the right to use subpoena or
19 other processes of the Court to compel witnesses to
20 attend the trial and testify and to obtain documentary
21 evidence which you might wish to offer in your defense.

22 If I accept your plea of guilty, you are
23 waiving, that is, you're giving up each of these rights
24 that I have just listed, there will be no trial and I
25 will have the same power to sentence you as if you'd been

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1 found guilty after a trial on the count to which you
2 plead guilty.

3 Do you understand, Mr. Smith, that if your plea
4 is accepted, you will be adjudged guilty of that offense
5 the same as if there was a jury trial and the jury, after
6 hearing all of the evidence, found you guilty?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: After the clerk takes your plea,
9 I'm going to ask you if you're pleading guilty freely and
10 voluntarily; about whether any promises of leniency have
11 been made to induce you to plead guilty other than what's
12 contained in the plea agreement; about whether threats or
13 force have been used to induce you to plead guilty; about
14 whether, as you're here today, you're under the influence
15 of any narcotics, drugs, pills or medicine which would in
16 any way impair your ability to understand the nature of
17 the charges and the consequences of pleading guilty;
18 about whether you did in fact commit the crimes charged
19 so that I can determine whether there is a factual basis
20 for your plea.

21 You will answer my questions under oath on the
22 record in the presence of your attorney. Your answers,
23 if not truthful, may later be used against you in a
24 prosecution for perjury or for making a false statement.

25 I will assure myself that you have been given a

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1 copy of the charges, the indictment, that you have read
2 it, you understand it, and that you have had an
3 opportunity to discuss this case with your attorney, and
4 that your attorney has advised you of the nature of the
5 charges, your rights, the factual basis for the plea, and
6 the consequences of pleading guilty, and that you and
7 your attorney have discussed any defenses that you might
8 have, and then I will question your attorney separately.

9 You must also be advised that your guilty plea
10 constitutes a waiver of your right against
11 self-incrimination so I want to warn you not to plead
12 guilty unless you are in fact guilty of the charges made
13 against you in count one of the indictment to which you
14 are pleading guilty.

15 Miss Norton, would you swear in the defendant
16 please.

17 COURT CLERK: Mr. Smith, would you please stand
18 and raise your right hand. Please state your name for
19 the record.

20 THE DEFENDANT: Shane Robert Smith.

21 (Whereupon, defendant placed under oath)

22 THE COURT: Mr. Smith, do you understand all of
23 the rights that you have, sir?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you still wish to plead guilty?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: I'm going to ask you to stand,
3 then, Britney, would you take the plea.

4 COURT CLERK: In the case of the United States
5 of America versus Shane Robert Smith, a/k/a Robert Smith,
6 case number 15-CR-333, the grand jury charges, in count
7 one of the indictment, illegal possession of a machine
8 gun.

9 On or about August 6th, 2015, in Washington
10 County, in the Northern District of New York, the
11 defendant, Shane Robert Smith, a/k/a Robert Smith, did
12 knowingly possess a machine gun, that is, a military
13 Armament Corporation MAC 10 machine gun bearing serial
14 number 1-3003144, in violation of Title 18, United States
15 Code, Sections 922(o) and 924(a)(2).

16 Mr. Smith, how do you plead to count one of the
17 indictment?

18 THE DEFENDANT: Guilty.

19 COURT CLERK: Do you acknowledge and admit to
20 the forfeiture allegation contained within indictment
21 15-CR-333?

22 THE DEFENDANT: Yes.

23 COURT CLERK: Thank you.

24 THE COURT: Be seated.

25 Sir, is your full name Shane Robert Smith?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: How old are you?

3 THE DEFENDANT: 19.

4 THE COURT: Are you a citizen of the U.S.?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: How far did you go in school?

7 THE DEFENDANT: G.E.D.

8 MR. MONTGOMERY: What was your last grade you
9 completed?

10 THE DEFENDANT: 11th.

11 THE COURT: Are you married?

12 THE DEFENDANT: No.

13 THE COURT: Do you have any children?

14 THE DEFENDANT: No.

15 THE COURT: What type of work do you usually
16 do?

17 THE DEFENDANT: Farm work.

18 THE COURT: Are you using any narcotics, drugs
19 or alcohol at the present time?

20 THE DEFENDANT: No.

21 THE COURT: Have you had any narcotics, drugs
22 or alcohol within the last 24 hours?

23 THE DEFENDANT: Just sleeping medicine.

24 THE COURT: Does the doctor prescribe that for
25 you?

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1 THE DEFENDANT: Yes.

2 THE COURT: When is the last time you took your
3 sleeping medication? Last night?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you taking any other kind of
6 medicine at the present time?

7 THE DEFENDANT: Just for ADHD.

8 THE COURT: Okay. Did you take your ADHD
9 medicine today?

10 THE DEFENDANT: No.

11 THE COURT: Are you currently being treated for
12 any mental health issues?

13 THE DEFENDANT: No.

14 THE COURT: When you take your medicine for
15 your ADHD, does that make it difficult for you to
16 understand what people are saying to you?

17 THE DEFENDANT: No.

18 THE COURT: Is there any reason why your
19 ability to understand my discussion with you today is
20 hindered or impaired in any way?

21 THE DEFENDANT: No.

22 THE COURT: Was your attorney, Mr. Montgomery,
23 hired by you or appointed by the Court?

24 THE DEFENDANT: Hired by me.

25 THE COURT: Are you fully satisfied with his

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1 representation of you?

2 THE DEFENDANT: Yes.

3 THE COURT: Has he advised you of your rights?

4 THE DEFENDANT: Yes.

5 THE COURT: Is there anything that you need to
6 ask the Court about this proceeding?

7 THE DEFENDANT: No.

8 THE COURT: Has your lawyer or any Assistant
9 United States Attorney, any government agent or anyone
10 else made any promises that you would be treated
11 leniently or any other kind of promise to induce you to
12 plead guilty?

13 THE DEFENDANT: No.

14 THE COURT: Are you pleading guilty freely and
15 voluntarily?

16 THE DEFENDANT: Yes.

17 THE COURT: Has any force or threat been used
18 against you to induce you to plead guilty?

19 THE DEFENDANT: No.

20 THE COURT: Are you presently on probation from
21 any other Court?

22 THE DEFENDANT: No.

23 THE COURT: Are you on parole from any
24 institution?

25 THE DEFENDANT: No.

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1 THE COURT: You've been arrested before,
2 correct?

3 THE DEFENDANT: Yes.

4 THE COURT: For both felonies and misdemeanors?

5 THE DEFENDANT: No, just misdemeanors.

6 THE COURT: Just misdemeanors?

7 MR. MONTGOMERY: Your Honor, if I could correct
8 the record.

9 THE COURT: Yes.

10 MR. MONTGOMERY: He was arrested on a felony
11 charge and he's currently sentenced on that. I believe
12 he's -- he may very well have been favored as a
13 misdemeanor but it was a felony. It's a criminal
14 mischief E felony in Washington County.

15 THE COURT: That goes back to 2014, does it?

16 MR. MONTGOMERY: Yes, and I believe he was
17 sentenced on it this year because he had been released on
18 probation. This arrest caused a violation of that
19 probation and he was resentenced as a Y.O., youthful
20 offender, in Washington County.

21 THE COURT: Okay.

22 MR. MONTGOMERY: For a term of one to three
23 years.

24 THE COURT: I see that. Thank you for that
25 clarification.

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1 MR. MONTGOMERY: You're welcome, Judge.

2 THE COURT: Mr. O'Dowd, does the government
3 have sufficient proof to prove this defendant guilty
4 beyond a reasonable doubt?

5 MR. O'DOWD: Yes, your Honor, we do.

6 THE COURT: Mr. Smith, I'm going to ask Mr.
7 O'Dowd to state what the government would prove if this
8 case had gone to trial. Please listen to that because
9 after he finishes, I'm going to ask you if that's what
10 you did and what happened.

11 So, Mr. O'Dowd, would you go ahead and state
12 what the government would prove if the case had gone to
13 trial.

14 MR. O'DOWD: Yes, your Honor. The elements of
15 the offense are set forth in paragraph 4 of the plea
16 agreement. If this case proceeded to trial, the
17 government would prove each of the following three
18 elements beyond a reasonable doubt:

19 First, that the defendant possessed a firearm
20 as described in the indictment. Second, that the firearm
21 the defendant possessed was a machine gun. In other
22 words, any weapon that shoots, is designed to shoot or
23 can be readily restored to shoot automatically more than
24 one shot, without manual reloading by a single function
25 of the trigger; and third, that the defendant acted

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1 knowingly.

2 We would prove these elements by establishing
3 the following facts: Beginning no later than May 2014,
4 the defendant repeatedly sought to purchase or otherwise
5 acquire firearms and ammunition, including fully
6 automatic weapons and semi-automatic weapons that he
7 intended to convert into fully automatic weapons.

8 On May 17th, 2014, the defendant sent an e-mail
9 message to a Switzerland-based Bitmessage account placing
10 an order for one M4 carbine and provided his home address
11 in Whitehall, New York. An M4 carbine is an assault
12 rifle capable of firing as a machine gun by discharging
13 three-round bursts with a single trigger pull.

14 From no later than October of 22, 2014, to
15 August 6th, 2015, the defendant maintained one or more
16 accounts with VK, a Russian social media platform that's
17 similar to Facebook. As of on or about October 22nd,
18 2014, the defendant listed his interests on his VK
19 profile page as guns, gunsmithing, building bombs,
20 knives, guerilla warfare, preserving my race and folk,
21 and destroying the government.

22 On January 12th of 2015, the defendant sent
23 another message to the same Switzerland-based Bitmessage
24 e-mail address. His January 12th message stated that he
25 would like to, "trade my goods for some of yours," and

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1 that he had "military-issued body armor, mag pouches, gas
2 masks and filters, ballistic vests and Kevlar helmets and
3 more" available for trade.

4 On January 27th, 2015, probation officers in
5 Washington County conducted a visit to the defendant's
6 residence in Whitehall, New York, in response to social
7 media postings by the defendant in which he indicated
8 that he was seeking to purchase ammunition.

9 During a consent search of the defendant's
10 residence, probation officers identified a combat helmet
11 and two body armor kits with heavy plates, among other
12 items.

13 On or about April 19th, 2015, the defendant
14 contacted another VK user via VK's private messaging
15 function and stated that he needed a favor for someone --
16 from someone, that the other user may be able to help
17 because the defendant was looking for something, namely,
18 an M10. The other VK user responded the World War II
19 tank? The AK copy? The defendant responded that while
20 the tank would be nice, he was looking for an Ingram's
21 Mac not the original like the civilian one.

22 On that same day the defendant ordered a book
23 titled Full Auto Volume Three, Semi-Auto MAC 10
24 Modification Manual from the website Keepshooting.com for
25 delivery to Shane Smith, SRA, at the defendant's home

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1 address in Whitehall, New York.

2 The subject of this book is how to convert MAC
3 10 firearms to fully automatic weapons. The defendant
4 purchased this book for the purpose of converting a
5 semi-automatic MAC 10 firearm into a fully automatic,
6 illegal Mac 10. In other communications, the defendant
7 indicated that SRA referred to a group he was forming
8 called the silent resistance Army.

9 After April 29th, 2015, after becoming aware of
10 the defendant's postings on social media, members of law
11 enforcement and individuals working with law enforcement
12 contacted the defendant in an undercover capacity. In
13 subsequent communications, the defendant confirmed that
14 he sought to acquire "a simple Mac 10, nothing fancy civi
15 legal one" and that I can do a trade on some cash.

16 On May 1st, 2015, in response to questions
17 about what he was going to use the Mac 10 for, the
18 defendant stated that, "What I'm doing is going to rock
19 and roll it and I have a suppressor for a Mac 10 I fab'd
20 in my shop but it's going to be used to execute kikes,
21 coons and get money for the crew."

22 The defendant indicated that while he was
23 flexible about the type of firearm, "I prefer Mac 10 or
24 11". On the same date as the above communications, the
25 defendant ordered three books from FTF Industries.com for

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1 delivery to his home address. These books were titled
2 Mac 10 Cookbook, Suppressers Volume 5, Ingram Mac 10, 11
3 Silencer Book and Full Auto Volume 8, M15 and Mini 15
4 Modification Manual. The subject of these books,
5 respectively, were Mac 10 firearm generally, the
6 manufacturing of illegal silencers for Mac 10 and Mac 11
7 firearms and the conversion of Mac 10 firearms into fully
8 automatic weapons.

9 In subsequent discussions with members of law
10 enforcement acting in an undercover capacity, the
11 defendant repeatedly discussed other firearms and related
12 paraphernalia he sought to acquire. These items included
13 an M-16 A-2, which is designed to fire as a machine gun
14 as well as hundreds of rounds of jacketed hollow-point
15 ammunition and Green Tip ammo, which is a type of
16 ammunition designed to pierce body armor.

17 The defendant also sought to acquire, quote,
18 boomers, which he explained meant explosives as in C4 or
19 grenades. In the summer of 2015 the defendant made plans
20 to meet with an undercover law enforcement officer for
21 the purpose of acquiring some of the foregoing items.
22 Prior to the meeting the defendant asked whether the
23 gadget would be hard to handle on rock and roll and then
24 stated I guess I'll find out soon, LOL. By rock and
25 roll, the defendant was referring to fully automatic

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1 mode.

2 Prior to the meeting the defendant expressed
3 concerns that he was, quote, going to get busted by the
4 feds when I meet someone tonight. I'm worried about
5 that, brother, he said. When asked if he was building
6 his own army, the defendant responded well, like a hit
7 squad.

8 On August 6th, 2015, the defendant met with an
9 undercover agent of the Federal Bureau of Investigation
10 in Whitehall, New York. At the meeting the undercover
11 agent displayed the following items: A Military Armament
12 Corporation Mac 10 machine gun, a suppressor for the Mac
13 10 machine, one Colt M-16 model A-2 machine gun, one
14 Beretta model 92FS, 120 rounds of Green Tip ammunition.

15 Prior to the transaction the grenades were
16 rendered inert and the firearms were modified by law
17 enforcement for safety purposes so that they could not
18 immediately be fired, although they were capable of being
19 readily restored to firing.

20 The Mac 10 is a machine gun because it is
21 designed to shoot and it can be readily restored to shoot
22 automatically more than one shot without manual reloading
23 by a single function of the trigger.

24 The undercover agent explained and demonstrated
25 to the defendant how the Mac 10 and M-16 A2 could each be

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1 switched to operate in fully automatic mode. The
2 defendant then took possession of the Mac 10 machine gun,
3 a suppressor for the Mac 10 machine gun, one Colt M-16
4 model A2 machine gun, one Beretta model 92FS handgun, and
5 120 rounds of Green Tip ammunition.

6 In exchange for these items, the defendant
7 provided the undercover agent with a number of items
8 including jewelry, books and maple syrup, as well as a
9 promise of future payment. Shortly after taking
10 possession of the above items, the defendant was
11 arrested. After acknowledging and waiving his Miranda
12 rights, the defendant admitted he was aware he was in
13 possession of a Mac 10 and M16 with automatic firing
14 capabilities.

15 The defendant's effort to illegally acquire
16 automatic weapons or to acquire semi-automatic weapons
17 for the purpose of converting them to fully automatic
18 weapons predated his first contact with law enforcement
19 officials relating to this investigation.

20 Your Honor, in addition to the three elements
21 and to the facts I just laid out, we would also prove, if
22 necessary, that the defendant was not authorized to
23 possess the machine gun because he was not an agent of
24 any federal or state law enforcement agency at any time
25 during the relevant time period.

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1 We would prove all of those factors through
2 documentary and testimonial evidence at trial.

3 THE COURT: Thank you, Mr. O'Dowd.

4 Mr. Smith, you just heard what the government
5 said they could prove if this case had gone to trial. Is
6 that what you did and what happened in this case?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Is that also your understanding,
9 Mr. Montgomery?

10 MR. MONTGOMERY: Yes, it is, your Honor.

11 THE COURT: There is a plea agreement, correct,
12 sir?

13 MR. MONTGOMERY: Yes, your Honor. What was
14 just presented on the record is exactly what -- reflects
15 what's in that plea agreement.

16 THE COURT: All right. Mr. O'Dowd, would you
17 inform the Court and the defendant about any stipulation
18 in the plea agreement relating to the sentence
19 guidelines.

20 MR. O'DOWD: Yes, your Honor. Paragraph 6 of
21 the plea agreement includes the following sentencing
22 stipulations: The parties stipulate that the base
23 offense level is 18 because the offense involves a
24 machine gun. Parties further stipulate that the offense
25 level is increased by two levels because the offense

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1 involved three firearms.

2 THE COURT: All right. Mr. Smith, do you
3 understand the plea agreement?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Have you gone over that with your
6 attorney?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: You have signed it, correct?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Do you understand that the Court is
11 not bound by the stipulations in the plea agreement?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you understand that by entering
14 into that plea agreement, you're giving up a number of
15 rights that I have previously gone over with you but they
16 include the right to be presumed innocent until proven
17 guilty beyond a reasonable doubt, the right to plead not
18 guilty, the right to a trial by a jury, the right to
19 confront, cross-examine and compel attendance of
20 witnesses at trial, the right to be present as evidence
21 is offered, the right to remain silent and refuse to be a
22 witness against yourself, you're giving up the right
23 against self-incrimination. You're giving up your right
24 to cross-examine witnesses at trial and to be present and
25 to present evidence in your defense. So by signing that

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1 plea agreement, you're giving up all of those rights. Do
2 you understand that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you understand that as set forth
5 in the plea agreement, you are waiving, that means you
6 are giving up any and all rights to appeal or
7 collaterally attack your conviction and any sentence of
8 imprisonment of 46 months or less, including any issues
9 with respect to the establishment of the advisory
10 sentencing guidelines and the reasonableness of the
11 sentence imposed? So you're giving those things up. Do
12 you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you understand that if the Court
15 decides to impose a sentence exceeding 46 months or
16 greater than 46 months, this would not permit you to
17 withdraw your guilty plea or to appeal or collaterally
18 attack your conviction but it would allow you to appeal
19 or collaterally attack the sentence imposed by the Court
20 to the extent permitted by law. Do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Mr. O'Dowd, would you inform the
23 defendant and the Court what the sentencing possibilities
24 are in this case.

25 MR. O'DOWD: Yes, your Honor. Maximum term of

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1 imprisonment, based upon the defendant in this case, is
2 ten years, maximum fine is \$250,000, maximum term of
3 supervised release is three years, and the defendant can
4 be sentenced to an additional term of imprisonment of up
5 to two years in the case of any supervised release
6 violation. There's a special assessment of \$100, there's
7 a forfeiture specified in the indictment. In addition,
8 there are collateral consequences of the felony
9 conviction, including the loss of the right to vote and
10 hold public office, loss of the right to serve on a jury,
11 loss of the right to keep and bear firearms and other
12 collateral consequences as well.

13 THE COURT: Do you know what the guideline
14 range might be, Mr. O'Dowd?

15 MR. O'DOWD: Your Honor, the government has
16 undertaken an estimate of the advisory guideline range in
17 this case. We estimate the total offense level here to
18 be 20, we estimate the Criminal History Category to be
19 II, that corresponds to pre-acceptance guideline range of
20 37 to 46 months. After acceptance of responsibility, we
21 calculate the total offense level, assuming credit for
22 acceptance, we calculate the total offense level as 17,
23 which would lead to an advisory guideline range of 27 to
24 33 months.

25 THE COURT: All right. Thank you.

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1 MR. O'DOWD: Your Honor, I just clarify that
2 this is only an estimate and in the event it's incorrect,
3 the defendant won't be allowed to withdraw his plea as we
4 discussed.

5 THE COURT: Thank you. Mr. Smith, has your
6 attorney discussed the sentencing guidelines with you and
7 how they apply to your case?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you understand that I will
10 consider those guidelines in determining your sentence?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you also understand that I won't
13 be able to determine what your specific guidelines range
14 will be until after I receive and review a pre-sentence
15 investigation report?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Also, do you understand that once
18 your guideline range has been determined, the Court has
19 the authority in some circumstances to depart from that
20 range and to impose a sentence that is more severe or
21 less severe than that called for by the guidelines?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you understand that a finding of
24 guilty may deprive you of certain valuable civil rights,
25 such as the right to vote, right to hold public office,

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1 the right to serve on a jury, and the right to possess a
2 firearm?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: There are other factors that I have
5 to consider in determining your sentence and I'm simply
6 going to tell you what those are now; they are found in
7 Title 18, United States Code, Section 3553(a) and they
8 include, the nature and circumstances of the offense and
9 your history and characteristics as the defendant; the
10 seriousness of the offense; the need to promote respect
11 for the law and to provide just punishment; the need to
12 afford adequate deterrence of criminal conduct; the need
13 to protect the public from further crimes; the need to
14 provide you with appropriate education, vocational,
15 medical or other treatment in an effective manner; any
16 pertinent policy issues raised by the Sentencing
17 Commission; the need to avoid unwarranted sentence
18 disparities and the need to provide restitution to the
19 victim, if any, of the offense.

20 I will also tell you that parole has been
21 abolished in the federal system, and if you are sentenced
22 to prison, you will not be released on parole. I think
23 we have covered this but, Mr. O'Dowd, does the defendant
24 have the right to withdraw his plea?

25 MR. O'DOWD: No, he does not, your Honor.

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1 THE COURT: That's also your understanding,
2 Mr. Montgomery?

3 MR. MONTGOMERY: That's correct, your Honor.

4 THE COURT: Mr. Smith, do you understand that
5 if I decide that I do not agree with the sentencing
6 stipulations in the plea agreement, you may not withdraw
7 your plea?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Now that you have been informed of
10 the penalties to the extent that we know them and the
11 sentencing guidelines and my role under the guidelines,
12 do you still wish to plead guilty?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Are you pleading guilty because you
15 are guilty and for no other reason?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: You have advised me that you have
18 gone over the indictment with Mr. Montgomery and that you
19 understand it. Do you now understand the penalties that
20 the could be imposed upon you as a result of pleading
21 guilty?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Other than what's contained in the
24 plea agreement, have any promises been made to you as to
25 what your sentence might be?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that you may not
3 appeal your sentence if I sentence you to 46 months or
4 less?

5 THE DEFENDANT: No. Yes, ma'am.

6 THE COURT: All right. I'm going to ask you
7 that again so that the answer is clear on the record.

8 Do you understand that you may not appeal your
9 sentence if I sentence you to 46 months or less?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. Mr. Montgomery, would
12 you state for the record your background and experience
13 with particular reference to the sentencing guidelines.

14 MR. MONTGOMERY: Well, your Honor, I believe I
15 was admitted to federal court back in 1983 or '84 and
16 I've practiced criminal law since then, former district
17 of Warren County, and I have had experience here in
18 federal court and I have reviewed with Mr. Smith the
19 various aspects that you referenced with respect to the
20 federal guidelines and the basis for arriving at those
21 guidelines.

22 THE COURT: How much time would you say you've
23 spent with Mr. Smith on this case?

24 MR. MONTGOMERY: Probably visited him in
25 Rensselaer County Jail probably no less than five times

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1 and I would say visits ranged from an hour to an hour and
2 a half. In addition to that, I've had telephone
3 conferences with him. I have also met with -- in the
4 Warren County facility with respect to the charge that
5 was pending there which resulted in a violation of
6 probation, based upon him being charged in this case.

7 And in addition to that, I have spent
8 substantial amount of time speaking with his grandfather,
9 Nelson Smith, who is responsible for raising Mr. Smith,
10 who is present in the courtroom today and I know that Mr.
11 Smith -- Nelson Smith has communicated with the
12 defendant, his grandson, with respect to the various
13 discussions we have had concerning this case.

14 THE COURT: Have you advised Mr. Smith of his
15 rights, the nature of the charges against him and the
16 consequences of pleading guilty?

17 MR. MONTGOMERY: Yes, I have, your Honor.

18 THE COURT: Did you get adequate discovery from
19 the government in this case?

20 MR. MONTGOMERY: Very much so.

21 THE COURT: Have you made any promises or
22 threats to induce Mr. Smith to plead guilty?

23 MR. MONTGOMERY: No, your Honor.

24 THE COURT: Are you satisfied that he's
25 pleading guilty freely and voluntarily with an

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1 understanding of the nature of the charge and the
2 consequences?

3 MR. MONTGOMERY: Yes, your Honor.

4 THE COURT: Do you know of any viable defense
5 that the defendant has that could be successfully
6 interposed at the time of trial?

7 MR. MONTGOMERY: No, your Honor.

8 THE COURT: Do you know of any other reason why
9 Mr. Smith should not plead guilty here today?

10 MR. MONTGOMERY: No, your Honor.

11 THE COURT: Thank you, Mr. Montgomery.

12 MR. MONTGOMERY: You're welcome.

13 THE COURT: I have taken into consideration the
14 statements made to me by you, Mr. Smith, as well as those
15 made to me by your attorney, Mr. Montgomery, and
16 statements made by the Assistant United States Attorney
17 Mr. O'Dowd.

18 Based upon those discussions, it is the finding
19 of this Court that you have pled guilty knowingly and
20 voluntarily; that you are competent and capable of
21 entering an informed plea; that you understand the
22 charges against you and the consequences of pleading
23 guilty; that there was a basis in fact for the Court
24 accepting this plea into the record. The plea agreement
25 is incorporated into the record.

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1 I accept your plea and you are now adjudged
2 guilty of that offense.

3 I direct probation to prepare and submit a
4 pre-sentence report. Counsel, the clerk will
5 electronically file the Northern District Uniform
6 Pre-Sentence Order. Once the presentence report is
7 prepared, it will be lodged with the clerk's office and
8 you will receive it electronically through ECF. Any
9 objections to the report must be submitted in writing to
10 probation within 14 days of receipt of the report.

11 Sentencing is set for August 15th, 2016, at
12 10 A.M. here in Albany. Again, that is August 15th,
13 2016, at 10 A.M.

14 Is there anything further from the government?

15 MR. O'DOWD: No, your Honor.

16 THE COURT: Anything further from the defense?

17 MR. MONTGOMERY: No, your Honor.

18 THE COURT: The defendant is remanded. Court
19 stands adjourned.

20 (Whereupon, proceeding concluded)

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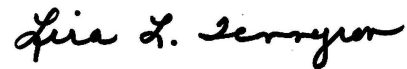
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C E R T I F I C A T I O N

I, Lisa L. Tennyson, RMR, CSR, CRR, Official
Court Reporter in and for the United States District
Court for the Northern District of New York, hereby
certify that the foregoing 29 pages taken by me to be a
true and complete computer-aided transcript to the best
of my ability.



Lisa L. Tennyson, R.M.R., C.S.R., C.R.R.

Lisa L. Tennyson, CSR, RMR, FCRR
UNITED STATES DISTRICT COURT - NDNY